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By: Delegates Morhaim and Weldon, Weldon, Hurson, Hammen, Benson, Boteler, Boutin, Costa, Donoghue, Elliott, Goldwater, Hubbard, Kach, Mandel, McDonough, Murray, Nathan-Pulliam, Oaks, Pendergrass, Rosenberg, Rudolph, Smigiel, and V. Turner

Introduced and read first time: February 6, 2004  
Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 16, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement - Board of Contract Appeals - Jurisdiction over State Claims**

3 FOR the purpose of authorizing an interested party to appeal a final action on a  
4 procurement contract claim made by a State agency to the State Board of  
5 Contract Appeals; altering the jurisdiction of the Appeals Board; clarifying that  
6 certain claims procedures for a procurement contract apply only to a claim by a  
7 contractor; establishing certain contract claims procedures for a State contract  
8 claim; requiring a State contract claim to include certain information; requiring  
9 the procurement officer to review a State contract claim; authorizing the  
10 procurement officer to request additional information or to discuss or negotiate  
11 a State contract claim with the State agency or the contractor; requiring the  
12 procurement officer to prepare a proposed decision on a State contract claim  
13 under certain circumstances; requiring a procurement officer to include certain  
14 information and the supporting rationale in a proposed decision; providing for  
15 review of a proposed decision by certain persons under certain circumstances;  
16 authorizing a reviewing authority to approve, disapprove, or modify a proposed  
17 decision; establishing that approval, disapproval, or modification of a proposed  
18 decision by the reviewing authority constitutes the final action of the State  
19 agency on the contract claim; authorizing a reviewing authority to remand with  
20 instructions a disapproved proposed decision to the procurement officer;  
21 authorizing the award of interest to a State agency under a procurement  
22 contract claim; and generally relating to the authority of the State Board of  
23 Contract Appeals over a procurement contract claim made by a State agency.

24 BY repealing and reenacting, without amendments,

1 Article - State Finance and Procurement  
2 Section 15-201, 15-215(b), and 15-219  
3 Annotated Code of Maryland  
4 (2001 Replacement Volume and 2003 Supplement)

5 BY repealing and reenacting, with amendments,  
6 Article - State Finance and Procurement  
7 Section 15-211, 15-217(a), 15-218, 15-220(a), and 15-222(a) and (b)  
8 Annotated Code of Maryland  
9 (2001 Replacement Volume and 2003 Supplement)

10 BY adding to  
11 Article - State Finance and Procurement  
12 Section 15-219.1  
13 Annotated Code of Maryland  
14 (2001 Replacement Volume and 2003 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - State Finance and Procurement**

18 15-201.

19 In this subtitle, "Appeals Board" means the Maryland State Board of Contract  
20 Appeals.

21 15-211.

22 (a) The Appeals Board shall have jurisdiction to hear and decide all appeals  
23 arising from the final action of a unit:

24 (1) on a protest relating to the formation of a procurement contract; or

25 (2) except for a contract claim relating to a lease of real property, on a  
26 contract claim BY A CONTRACTOR OR A UNIT concerning:

27 (i) breach;

28 (ii) performance;

29 (iii) modification; or

30 (iv) termination.

31 (b) A decision of the Appeals Board is final, subject to any judicial review.

1 15-215.

2 (b) (1) "Contract claim" means a claim that relates to a procurement  
3 contract.

4 (2) "Contract claim" includes a claim about the performance, breach,  
5 modification, or termination of the procurement contract.

6 15-217.

7 (a) (1) A prospective bidder or offeror, a bidder, or an offeror may submit a  
8 protest to the procurement officer.

9 (2) A UNIT OR A person who has been awarded a procurement contract  
10 may submit a contract claim to the procurement officer.

11 15-218.

12 (a) Except as provided under § 15-219 of this subtitle, a procurement officer  
13 who receives a protest or a contract claim FROM A CONTRACTOR shall comply with  
14 this section.

15 (b) (1) On receipt of a protest or contract claim [under § 15-217 of this  
16 subtitle] FROM A CONTRACTOR, a procurement officer:

17 (i) shall review the substance of the protest or contract claim;

18 (ii) may request additional information or substantiation through  
19 an appropriate procedure;

20 (iii) may discuss with interested parties and, if appropriate, may  
21 conduct negotiations with the person initiating the protest or contract claim; and

22 (iv) shall comply with any applicable regulations.

23 (2) Unless clearly inappropriate, the procurement officer shall seek the  
24 advice of the Office of the Attorney General.

25 (c) (1) Subject to subsection (b) of this section and consistent with the State  
26 budget and other applicable laws, the procurement officer shall:

27 (i) resolve the protest or contract claim by agreement of the  
28 parties;

29 (ii) wholly or partly deny the protest or contract claim; or

30 (iii) wholly or partly grant the relief sought by the person who  
31 submitted the protest or contract claim.

32 (2) The procurement officer promptly shall send the decision in writing  
33 to the reviewing authority.

1 (d) Unless otherwise provided by regulation, the decision of the procurement  
2 officer shall be reviewed promptly by:

3 (1) the head of the unit; and

4 (2) the head of the principal department or other equivalent unit of  
5 which the unit is a part.

6 (e) (1) Except as provided under paragraph (3) of this subsection, the  
7 reviewing authority shall approve, disapprove, or modify the decision of the  
8 procurement officer.

9 (2) The action of the reviewing authority under this subsection shall be  
10 the final action of the unit.

11 (3) The reviewing authority may remand the proceeding with  
12 instructions to the procurement officer.

13 (4) On remand, the procurement officer shall proceed under subsection  
14 (b) of this section in accordance with those instructions.

15 15-219.

16 (a) Except to the extent a shorter period is prescribed by regulation governing  
17 differing site conditions, a contractor shall file a written notice of a claim relating to  
18 a procurement contract for construction within 30 days after the basis for the claim is  
19 known or should have been known.

20 (b) Unless extended by the unit, within 90 days after submitting a notice of a  
21 contract claim under a procurement contract for construction, a contractor shall  
22 submit to the unit a written explanation that states:

23 (1) the amount of the contract claim;

24 (2) the facts on which the contract claim is based; and

25 (3) all relevant data and correspondence that may substantiate the  
26 contract claim.

27 (c) (1) Subject to paragraph (2) of this subsection, the head of the unit  
28 engaged in procurement of the construction shall review the contract claim.

29 (2) If the unit is part of a principal department or other equivalent unit,  
30 the Secretary of the principal department or the equivalent official shall review the  
31 contract claim, unless review has been delegated by regulation to the head of the unit.

32 (d) The person who reviews a contract claim under subsection (c) of this  
33 section shall:

34 (1) investigate the contract claim; and

1           (2)     give the contractor written notice of a resolution of the contract claim:

2                   (i)     within 90 days after receiving the contract claim or a longer  
3 period to which the parties agree, if the amount of the contract claim is not more than  
4 the amount under which the accelerated procedure may be selected before the  
5 Appeals Board; or

6                   (ii)    for any other contract claim, within 180 days after receiving the  
7 contract claim or a longer period to which the parties agree.

8     (e)     Recovery under a contract claim is not allowed for any expense incurred:

9           (1)     more than 30 days before the required submission of a notice of a  
10 claim under subsection (a) of this section; or

11           (2)     unless the time for submission of a claim is extended under  
12 subsection (b) of this section, more than 120 days before the required submission of  
13 the claim.

14     (f)     (1)     If the unit determines that it is responsible for a portion but not all of  
15 the amount claimed by the contractor, subject to the terms of the contract, the unit  
16 shall pay the undisputed amount.

17           (2)     Payment of the undisputed amount:

18                   (i)     is not an admission of the liability of the unit on the claims; and

19                   (ii)    does not preclude recovery of the amount paid if it subsequently  
20 is determined that the determination of the unit was not correct.

21     (g)     (1)     A decision not to pay a contract claim is a final action for the purpose  
22 of appeal to the Appeals Board.

23           (2)     The failure to reach a decision within the time required under  
24 subsection (c) of this section may be deemed, at the option of the contractor, to be a  
25 decision not to pay the contract claim.

26     (h)     At the time of final payment, the unit shall:

27           (1)     release the retainage due to the contractor; and

28           (2)     pay any interest that:

29                   (i)     has accrued on the retainage from the time of payment of the  
30 semifinal estimate; and

31                   (ii)    is due and payable to the contractor.

1 15-219.1.

2 (A) (1) A UNIT MAY ASSERT A CONTRACT CLAIM AGAINST A CONTRACTOR BY  
3 SENDING WRITTEN NOTICE TO THE CONTRACTOR AND THE PROCUREMENT OFFICER  
4 THAT STATES:

5 (I) THE BASIS FOR THE CONTRACT CLAIM;

6 (II) TO THE EXTENT KNOWN, THE AMOUNT, OR THE PERFORMANCE  
7 OR OTHER ACTION, REQUESTED BY THE UNIT IN THE CONTRACT CLAIM; AND

8 (III) THE DATE BY WHICH THE CONTRACTOR IS REQUIRED TO  
9 PROVIDE A WRITTEN RESPONSE TO THE CONTRACT CLAIM.

10 (2) ON RECEIPT OF A CONTRACT CLAIM FROM A UNIT, A PROCUREMENT  
11 OFFICER:

12 (I) SHALL REVIEW THE SUBSTANCE OF THE CONTRACT CLAIM;

13 (II) MAY REQUEST ADDITIONAL INFORMATION OR  
14 SUBSTANTIATION THROUGH AN APPROPRIATE PROCEDURE; AND

15 (III) MAY DISCUSS OR, IF APPROPRIATE, NEGOTIATE THE CONTRACT  
16 CLAIM WITH THE UNIT OR CONTRACTOR.

17 (3) THE PROCUREMENT OFFICER SHALL PROCEED UNDER SUBSECTION  
18 (B) OF THIS SECTION IF THE CONTRACTOR FAILS TO RESPOND, PROVIDES AN  
19 INADEQUATE RESPONSE, OR DENIES THE CONTRACT CLAIM OR THE RELIEF SOUGHT  
20 BY THE UNIT IN WHOLE OR IN PART.

21 (B) (1) IF THE CONTRACTOR AND THE UNIT DO NOT RESOLVE THE  
22 CONTRACT CLAIM, THE PROCUREMENT OFFICER SHALL PREPARE A PROPOSED  
23 DECISION ON THE CONTRACT CLAIM, INCLUDING:

24 (I) A DESCRIPTION OF THE CONTRACT CLAIM;

25 (II) REFERENCES TO PERTINENT CONTRACT PROVISIONS;

26 (III) A STATEMENT OF FACTUAL AREAS OF AGREEMENT OR  
27 DISAGREEMENT; AND

28 (IV) A STATEMENT IN THE PROPOSED DECISION WHOLLY OR  
29 PARTLY GRANTING OR DENYING THE RELIEF SOUGHT, WITH SUPPORTING  
30 RATIONALE.

31 (2) UNLESS OTHERWISE PROVIDED BY REGULATION, THE  
32 PROCUREMENT OFFICER SHALL SUBMIT THE CONTRACT CLAIM AND PROPOSED  
33 DECISION TO:

34 (I) THE HEAD OF THE UNIT; AND

1 (II) THE HEAD OF THE PRINCIPAL DEPARTMENT OR OTHER  
2 EQUIVALENT UNIT OF WHICH THE UNIT IS A PART.

3 (3) (I) THE REVIEWING AUTHORITY SHALL APPROVE, MODIFY, OR  
4 DISAPPROVE THE PROPOSED DECISION.

5 (II) IN DISAPPROVING A PROPOSED DECISION, THE REVIEWING  
6 AUTHORITY MAY REMAND THE CONTRACT CLAIM WITH INSTRUCTIONS TO THE  
7 PROCUREMENT OFFICER.

8 (III) ON REMAND, THE PROCUREMENT OFFICER SHALL PROCEED AS  
9 REQUIRED UNDER THIS SUBSECTION AND IN ACCORDANCE WITH THE  
10 INSTRUCTIONS OF THE REVIEWING AUTHORITY.

11 (4) THE DECISION OF THE REVIEWING AUTHORITY IS THE FINAL  
12 ACTION OF THE UNIT.

13 15-220.

14 (a) Except for a contract claim related to a lease for real property, a bidder or  
15 offeror, a prospective bidder or offeror, A UNIT, or a contractor may appeal the final  
16 action of a unit to the Appeals Board.

17 15-222.

18 (a) Notwithstanding any provision of a procurement contract, the Appeals  
19 Board may award interest on money that the Appeals Board determines to be due to  
20 the UNIT OR THE contractor under a contract claim.

21 (b) (1) Subject to paragraph (2) of this subsection, interest may accrue from  
22 a day that the Appeals Board determines to be fair and reasonable after hearing all  
23 the facts until the day of the decision by the Appeals Board.

24 (2) Interest may not accrue before the procurement officer receives a  
25 contract claim from the UNIT OR THE contractor.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2004.